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Electronically Filed January 29, 2007

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IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

| | | |
|-------------------------|---|---|
| In re |) | Bankruptcy Case No. BK-S- 06-10725-LBR |
| |) | |
| USA COMMERCIAL MORTGAGE |) | |
| COMPANY, |) | APPELLANT'S STATEMENT OF ISSUES |
| <i>fka</i> USA Capital |) | ON APPEAL |
| |) | |
| Debtor |) | |
| |) | |
| |) | |
| |) | |

Appellant Debt Acquisition Company of America states the following issues on appeal of the order (the "Confirmation Order") confirming the Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan"):

1. Could the Bankruptcy court approve a "sale" of certain loan servicing agreements referred to in the Plan (the "Loan Servicing Agreements") to Compass Partners, LLC ("Compass") "free and clear" of the rights and defenses to performance held by the counter parties to those agreements?

2. Was the Plan confirmable, as to its provisions which purported to bind the parties referred to as "Direct Lenders" to the terms of a purported compromise, where no reasonable opportunity was given to opt out of the compromise?

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1 3. Did the Bankruptcy Court err in including in the Confirmation Order additional terms,
2 said to reflect a further compromise with Compass, that were not included in the Plan itself?

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4 4. Were the claims identified in the Plan as “Unremitted Principal Claims” required to be
5 paid in full as a condition to the assignment of the loan servicing agreements to Compass?

6
7 5. Were the Loan Servicing Agreements executory contracts within the meaning of 11
8 U.S.C. § 365?

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10 6. If the loan servicing agreements were executory contracts, was the Debtor required to
11 assume them as a condition to assigning them to Compass?

12
13 7. Does the Plan impermissibly modify the rights of the Direct Lenders under the Loan
14 Servicing Agreements?

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16 8. Is the Plan confirmable under 11 U.S.C. § 1129(a)(1), or does it conflict with provisions
17 of the Bankruptcy Code, including 11 U.S.C. §365 and subsection 363(f).

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20 DATE: January 29, 2007

KIRBY & McGUINN

A Professional Corporation

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24 By: /s/
25 Dean T. Kirby, Jr.
26 Attorneys for Creditor and Appellant
27 Debt Acquisition Company of America V, LLC
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